

**20 CFR Part 220****RIN 3220 – AB77****Consultative Examinations****AGENCY:** Railroad Retirement Board.**ACTION:** Proposed rule.

SUMMARY: The Railroad Retirement Board proposes to amend its regulations concerning consultative examinations used in adjudication of claims for disability annuities. The amendment will permit psychological and psychiatric consultative examinations to be conducted through the use of video teleconferencing technology. The amendment will allow the remote conduct of examinations where physical contact is not required and will facilitate medical evaluations when physical proximity is not feasible.

DATES: Submit comments on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may send comments, identified by RIN number, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for sending comments.

E-mail: SecretarytotheBoard@RRB.gov. Include **RIN 3220-AB77** in the subject line of the message.

Mail: Secretary to the Board, Railroad Retirement Board, 844 N. Rush St, Chicago, IL 60611-1275.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, (312) 751-4945, TTD (312) 751-4701, Marguerite.Dadabo@rrb.gov.

SUPPLEMENTARY INFORMATION: The Railroad Retirement Board (Board) proposes to amend its disability regulations to allow video teleconferencing technology (VTT) to be used to conduct a psychological or a psychiatric consultative examination in a case where such technology permits proper evaluation of a claimant. A VTT consultative examination is an examination conducted through a telecommunications system that allows the examining physician or psychologist and the claimant to see and hear each other for the purpose of communication in real time. A VTT consultative examination must comply with all requirements for consultative examinations in subpart G of Part 220 of the Board's regulations, 20 CFR part 220, subpart G. In addition, the following requirements must be followed if a VTT consultative examination is used. The examining physician or psychologist must be currently licensed in the state in which the provider practices.

The examining physician or psychologist must have the training and experience to perform the type of examination requested. The examining physician or psychologist must have access to VTT, and the claimant must live in the same state in which the provider practices. The claimant shall have the right to refuse a VTT consultative examination without penalty.

REGULATORY REQUIREMENTS

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this proposed rule does not meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563.

Executive Order 13132 (Federalism)

This proposed rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Board believes that this proposed rule will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Regulatory Flexibility Act

We certify that this proposed rule would not have a significant economic impact on a substantial number of small entities because the proposed rule affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

This proposed rule does not create any new or affect any existing collections and, therefore, does not require OMB approval under the Paperwork Reduction Act.

List of Subjects in 20 CFR Part 220

Disability benefits, railroad employees, railroad retirement

For the reasons discussed in the Preamble, the Railroad Retirement Board proposes to amend 20 CFR part 220 as follows:

Part 220 – DETERMINING DISABILITY

1. The authority citation for part 220 continues to read as follows:

Authority: 45 U.S.C. 231a; 45 U.S.C. 231f.

2. Amend § 220.57 by adding paragraph (c) to read as follows:

§ 220.57 Types of purchased examinations and selection of sources.

* * * * *

(c) *Use of Video Teleconferencing Technology.* Video teleconferencing technology (VTT) may be used for a psychological or a psychiatric consultative examination provided that the following requirements are met:

- (1) The examining physician or psychologist is currently state-licensed in the state in which the provider practices;
- (2) The examining physician or psychologist has the training and experience to perform the type of examination requested;
- (3) The examining physician or psychologist has access to video teleconferencing technology;
- (4) The examining physician or psychologist is permitted to perform the exam in accordance with state licensing laws and regulations;
- (5) The protocol for the examination does not require physical contact;
- (6) The claimant has the right to refuse a VTT examination without penalty; and
- (7) The VTT examination complies with all requirements in this Subpart governing consultative examinations.

Dated: January 27, 2022.

For the Board.

Stephanie Hillyard,
Secretary to the Board.